

ORDER NO. 4143

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Chairman;
Mark Acton, Vice Chairman;
Tony Hammond; and
Nanci E. Langley

Competitive Product Prices
Alternative Delivery Provider Reseller (ADPR) Contracts
ADPR 1

Docket No. MC2017-170

Competitive Product Prices
ADPR 1 (MC2017-170)
Negotiated Service Agreements

Docket No. CP2017-268

ORDER ADDING ADPR 1 TO THE COMPETITIVE PRODUCT LIST AND
DESIGNATING BASELINE AGREEMENT

(Issued October 5, 2017)

I. INTRODUCTION

The Postal Service seeks to add a new product identified as Alternative Delivery Provider Reseller 1 (ADPR 1) to the competitive product list.¹ For the reasons discussed below, the Commission approves the Request.

¹ Request of the United States Postal Service to Add Alternative Delivery Provider Reseller 1 Contracts to the Competitive Products List, and Notice of Filing (Under Seal) of Contract and Application for Non-Public Treatment of Materials Filed Under Seal, August 15, 2017 (Request).

II. BACKGROUND

Contracts included in ADPR 1 offer discounted prices to a reseller for international shipping services using a combination of services provided by the Postal Service and an alternative delivery provider acting as the Postal Service's delivery agent. See Request at 3. The reseller's customers prepare shipments using the Postal Service's Global Shipping Software and present the shipment to the Postal Service for verification. *Id.* at 3-4. The reseller's customers then transport the shipment to the delivery agent who provides or arranges the remainder of the shipping services, including transportation, customs processing, and delivery, as well as handling any claims of loss. *Id.* at 4.

On August 15, 2017, the Postal Service filed the Request, supporting documents, and the negotiated service agreement (Agreement) it seeks to have designated as the baseline agreement for the ADPR 1 product. The supporting documents include:

- A statement of supporting justification for adding ADPR 1 to the competitive product list
- A copy of Governors' Decision No. 11-6
- Proposed revisions to the Mail Classification Schedule (MCS)
- A copy of the Agreement
- A certification of compliance with 39 U.S.C. § 3633(a)
- Financial workpapers

See *id.* Attachments 1-5. Also, the Postal Service submitted an application for non-public treatment of materials requesting that unredacted portions of the Agreement, customer-identifying information, and related financial information remain under seal. Request, Attachment 6.

The Postal Service requests that the Commission add the Agreement, together with any subsequent functionally equivalent ADPR 1 contracts, as one product on the competitive product list within the MCS. Request at 2.

The Postal Service will notify the customer of the effective date of the Agreement. *Id.* at 4. The Agreement will remain in effect for one calendar year from the effective date. *Id.*

On August 16, 2017, the Commission issued a notice establishing the two dockets, appointing a Public Representative, and providing interested persons with an opportunity to comment.²

On August 24, 2017, Chairman's Information Request No. 1 was issued.³ CHIR No. 1 asked the Postal Service to:

- Provide revised draft MCS language for ADPR 1
- Explain a particular redaction in the public version of the Agreement
- Provide a copy of a document incorporated by reference into the Agreement
- Provide a copy of the termination provisions in its contract with the delivery agent
- Provide a copy of the price increase provisions (if any) in its contract with the delivery agent
- Explain whether a particular provision of the Agreement would limit the Postal Service's ability to raise prices charged to the reseller

CHIR No. 1 at 1-3. The Postal Service filed a response to CHIR No. 1 on August 30, 2017.⁴ In that response, the Postal Service provided the requested explanations and information, some of it under seal. Responses to CHIR No. 1 at 3-12. Additionally, the Postal Service stated that it would file a modification to the Agreement to clarify that the ability of the Postal Service to raise prices charged to the reseller was not limited by the

² See Docket No. CP2017-265, *et al.*, Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings, August 16, 2017.

³ Chairman's Information Request No. 1, August 24, 2017 (CHIR No. 1).

⁴ Responses of the United States Postal Service to Chairman's Information Request No. 1, with Portions Filed Under Seal, August 30, 2017 (Responses to CHIR No. 1).

lack of published rates for the ADPR product. *Id.* at 12. That modification was filed on September 7, 2017.⁵

On September 12, 2017, Chairman's Information Request No. 2 was issued.⁶ CHIR No. 2 provided revised draft MCS language and asked Postal Service to confirm that the revised language accurately described the ADPR 1 product. CHIR No. 2 at 1. The Postal Service filed a response to CHIR No. 2 on September 19, 2017.⁷ The Postal Service confirmed that the alternative language accurately described the ADPR 1 product, and requested an additional change.⁸

III. COMMENTS

The Public Representative filed comments on August 23, 2017.⁹ No other interested person submitted comments. The Public Representative concludes that the Postal Service's assertions regarding the requirements of U.S.C. § 3642(b)(1) are reasonable, and that it would be appropriate to add ADPR 1 to the competitive product list. See PR Comments at 3. She also concludes that the negotiated prices should generate sufficient revenue to cover costs, in compliance with U.S.C. § 3633(a). *Id.*

⁵ Notice of the United States Postal Service of Filing Modification, September 7, 2017 (Notice). The modification is an attachment to the Notice (Modification). The phrase "the Agreement, as modified" as used in this Order refers to the instant Agreement incorporating this Modification.

⁶ Chairman's Information Request No. 2, September 12, 2017 (CHIR No. 2).

⁷ Response of the United States Postal Service to Chairman's Information Request No. 2, September 19, 2017 (Response to CHIR No. 2).

⁸ Response to CHIR No. 2 at 3. The Postal Service suggests a terminology change from "shippers" to "resellers."

⁹ Public Representative Comments on the Postal Service's Request to Add Alternative Delivery Provider Reseller 1 Contracts to the Competitive Products List, August 23, 2017 (PR Comments).

IV. COMMISSION ANALYSIS

The Commission has reviewed the Request, the Agreement, supporting documents, financial analyses provided under seal, the Public Representative's comments, and the Postal Service's Responses to CHIR No. 1 and CHIR No. 2.

Product classification. The Commission's statutory responsibilities when evaluating the Request include assigning the ADPR 1 product to either the market dominant or competitive product list. See 39 U.S.C. § 3642(b)(1); 39 C.F.R. § 3020.34(a). Before adding a product to the competitive product list, the Commission must consider three criteria. First, the Commission must find that the Postal Service does not "exercise[] sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products." 39 U.S.C. § 3642(b)(1); see 39 C.F.R. § 3032.32(d). Second, the Commission must ensure that the product is not covered by the postal monopoly. 39 U.S.C. § 3642(b)(2); 39 C.F.R. § 3020.32(e). Third, the Commission must consider the availability and nature of private sector enterprises engaged in delivering the product, the views of those who use the product, and the likely impact on small business concerns. See 39 U.S.C. § 3642(b)(3); 39 C.F.R. §§ 3020.32(f)-(h).

The Postal Service asserts that when negotiating ADPR 1 contracts, its bargaining position is constrained by other shippers who provide similar services, which prevents the Postal Service from increasing prices or decreasing service. Request, Attachment 1 at 3. The Postal Service asserts it cannot raise prices substantially above costs or decrease quality or output without risking loss of business to large competitors that offer international express and package delivery services. *Id.* It notes that the ADPR product involves reselling the Alternative Delivery Provider (ADP) product, which

has been classified as competitive.¹⁰ *Id.* It contends that small businesses will benefit because ADPR 1 contracts will provide pricing incentives that reduce costs. *Id.* at 5.

The Commission finds that the Postal Service does not exercise sufficient market power that it can effectively set the price of the proposed product substantially above costs, raise prices significantly, decrease quality, or decrease output, without the risk of losing a significant level of business to other firms offering similar products. First, the shipping service offered to the reseller's customers under ADPR 1 compete in the market for international shipping services where other products have been classified as competitive. Second, major competitors exist in the international shipping market, and their products are widely available to United States customers. Third, in considering the views of the users, customers such as the contract partner will likely be interested in the ADPR 1 product. Fourth, there is no evidence of an adverse impact on small businesses. For these reasons, having considered the relevant statutory and regulatory requirements and the Postal Service's supporting justification, the Commission finds that the ADPR 1 product is appropriately classified as competitive and adds it to the competitive product list.

Product list and MCS language. The Postal Service proposes adding a new section 2510.14 to the MCS to cover ADPR Contracts. See Request at 2; *id.* Attachment 3. These proposed changes define the ADPR 1 product in terms of reselling the ADP 1 product. *Id.*, Attachment 3. Unlike other products offered by existing reseller agreements, however, ADP 1 is not a shipping service offered to the general public.¹¹ Instead, ADP 1 is a collection of functionally equivalent negotiated

¹⁰ Because the ADP 1 product is available only as a negotiated service agreement, the Commission has opted to define and analyze the ADPR 1 product in terms of the underlying shipping services rather than by direct reference to reselling ADP 1. See page 6, *infra*.

¹¹ Other types of reseller agreements include Global Reseller Expedited Package Services Contracts and Global Plus Contracts.

service agreements.¹² Contracts included in ADP 1 provide prices for a shipping service defined partially by the contract terms, but ADP 1 is not itself a shipping service. Adopting the proposed MCS language to define ADPR 1 in terms of ADP 1 would thus be problematic.

As noted above, however, the underlying shipping service that ADPR customers will resell competes with other international shipping services and is appropriately classified as competitive. The Commission therefore opts to adopt MCS language that defines ADPR 1 in terms of this underlying shipping service, rather than by reference to ADP 1. The Commission proposed such language to the Postal Service in CHIR No. 2 and the Postal Service confirmed that the language accurately describes the ADPR 1 product in the Response to CHIR No. 2.¹³

Cost considerations. Because the Commission finds that ADPR 1 is a competitive product, the Postal Service must also show that the Agreement covers its attributable costs, does not cause market dominant products to subsidize competitive products as a whole, and contributes to the Postal Service's institutional costs. 39 U.S.C. § 3633(a); 39 C.F.R. §§ 3015.5 and 3015.7. As long as the revenue generated by the Agreement exceeds its attributable costs, the Agreement is unlikely to reduce the contribution of competitive products as a whole or to adversely affect the ability of competitive products as a whole to contribute an appropriate share of institutional costs. In other words, if the Agreement covers its attributable costs, it is likely to comply with 39 U.S.C. § 3633(a).

The Request includes a certified statement that the Agreement complies with the requirements of 39 U.S.C. § 3633(a). Request, Attachment 5. The Postal Service also

¹² As of the date of this order, ADP 1 includes only a single negotiated service agreement, but the Postal Service has the option of entering into other functionally equivalent contracts that would then become part of the ADP 1 product.

¹³ See CHIR No. 2 at 1; Response to CHIR No. 2 at 3. The Postal Service recommended an additional change to § 2510.14.3, replacing "Shippers" with "Resellers." Response to CHIR No. 2 at 3. The Commission accepts the proposed change, and additionally makes one other change to that section to remove the additional reference to "ADP contracts."

filed supporting revenue and cost data showing that the Agreement is expected to cover its costs. Based on its review of the record, the Commission finds that the rates should cover the Agreement's attributable costs. See 39 U.S.C. § 3633(a)(2). For this reason, the Commission concludes that the Agreement should not result in competitive products as a whole being subsidized by market dominant products, in accordance with 39 U.S.C. § 3633(a)(1). Similarly, the Commission finds that the Agreement is unlikely to prevent competitive products as a whole from contributing an appropriate share of institutional costs, consistent with 39 U.S.C. § 3633(a)(3). See *also* 39 C.F.R. § 3015.7(c).

The Commission will review the cost coverage of the Agreement, the ADPR 1 product, and the contribution of competitive products as a whole to the Postal Service's institutional costs in the Annual Compliance Determination to ensure that they continue to comply with 39 U.S.C. § 3633(a).

In conclusion, a preliminary review of the Agreement indicates that it is consistent with section 3633(a).

Baseline agreement. The Commission designates the Agreement as the baseline agreement for the ADPR 1 product. Following current practice, in any future request to add a new negotiated service agreement to the ADPR 1 product, the Postal Service shall identify all significant differences between the new negotiated service agreement and the baseline agreement. Significant differences include terms and conditions that impose new obligations or new requirements on any party to the negotiated service agreement. The docket referenced in the caption of the request should be Docket No. MC2017-170. Consistent with current practice, the request should include a redacted copy of Governors' Decision 11-6.

Other considerations. The Agreement is intended to take effect upon notification of the customer by the Postal Service, after approval is granted by the Commission. Request at 4. The Postal Service shall promptly notify the Commission of the

Agreement's effective date. The Agreement will remain in effect for one calendar year from the effective date. *Id.*

The Postal Service filed a Modification to the Agreement as it stated it planned to do in Response to CHIR No 1 to address the Commission's concerns. See Response to CHIR No. 1 at 12. The Commission approves the Modification.

In conclusion, the Commission approves ADPR 1 as a new product and designates the Agreement, as modified, as the baseline agreement for the ADPR 1 product. Revisions to the competitive product list and the MCS appear below the signature of this Order and are effective immediately.

V. ORDERING PARAGRAPHS

It is ordered:

1. ADPR 1 (MC2017-170 and CP2017-268) is added to the competitive product list as a new product. Revisions to the competitive product list and the MCS appear below the signature of this Order and are effective immediately.
2. The Commission designates the Agreement, as modified, as the baseline agreement for the ADPR 1 product.
3. The Postal Service shall promptly notify the Commission of the effective date of the Agreement, as modified.
4. If the Agreement, as modified, terminates before the scheduled expiration date, the Postal Service shall promptly notify the Commission in these dockets.

5. The Secretary shall arrange for publication in the *Federal Register* of an updated product list reflecting the change made in this Order.

By the Commission.

Stacy L. Ruble
Secretary

CHANGE IN PRODUCT LIST

The following material represents changes to the product list codified in Appendix B to 39 C.F.R. part 3020, subpart A—Competitive Product List. These changes reflect the Commission’s order in Docket Nos. MC2017-170 and CP2017-268. The Commission uses two main conventions when making changes to the product list. New text is underlined. Deleted text is struck through.

Appendix B to Subpart A of Part 3020—Competitive Product List

Negotiated Service Agreements*

Outbound International*

Alternative Delivery Provider Reseller (ADPR) Contracts

ADPR 1

CHANGES TO THE MAIL CLASSIFICATION SCHEDULE

The following material represents a change to the Mail Classification Schedule. The Commission uses two main conventions when making changes to the Mail Classification Schedule. New text is underlined. Deleted text is struck through.

Part B—Competitive Products **2000 Competitive Product List**

2500 Negotiated Service Agreements*

2510 Outbound International

2510.2 Negotiated Service Agreement Groups

- Alternative Delivery Provider Reseller (ADPR) Contracts (2510.14)

2510.14 Alternative Delivery Provider Reseller (ADPR) Contracts

2510.14.1 Description

- Alternative Delivery Provider Reseller (ADPR) Contracts provide discounted prices to a reseller for package shipping services to specified destination countries using a combination of the Postal Service and Postal Service delivery agent(s). The reseller offers prices based on its contract to its customers.
- Preparation requirements are as specified in the reseller's ADPR contract.
- Packages sent under ADPR Contracts may not contain letters unless subject to an exception or suspension as set forth in 39 CFR Parts 310 and 320.
- To qualify for an ADPR contract a reseller must be capable, on an annualized basis, of paying at least \$500,000.00 in international postage to the Postal Service.
- Individual negotiated agreements must comply with the requirements specified in 39 U.S.C. § 3633.

2510.14.2 Size and Weight Limitations

	<u>Length</u>	<u>Height</u>	<u>Thickness</u>	<u>Weight</u>
<u>Minimum</u>	<u>The surface area of the address side of the item must be large enough to completely contain the shipping label.</u>			<u>none</u>
<u>Maximum</u>	<u>46 inches</u>	<u>46 inches</u>	<u>35 inches</u>	<u>70 pounds</u>
	<u>108 inches in combined length and girth</u>			

2510.14.3 Minimum Volume or Revenue Requirements

Resellers must commit to tendering varying minimum volumes or postage on an annualized basis.

2510.14.4 Price Categories

The following price categories are available for the product specified in this section:

- Pricing may vary based on origin, weight, destination, and other factors.

2510.14.5 Optional Features

The following additional postal services may be available in conjunction with the product specified in this section:

- None

2510.14.6 Products Included in Group (Agreements)

Each product is followed by a list of agreements included within that product.

- ADPR 1
Baseline Reference
Docket Nos. MC2017-170 and CP2017-268
PRC Order No. 4143
Included Agreements